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09-24487

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN RE:

Benny Leland Cotter and Judy Webster Cotter

Debtors.

Wells Fargo Bank, National Association, as Trustee
for the Certificateholders of Structured Asset
Mortgage Investments II Inc., Bear Stearns
Mortgage Funding Trust 2006-AR5 Mortgage Pass-
Through Certificates, Series 2006-AR5

Secured Creditor,

vs.

Benny Leland Cotter and Judy Webster Cotter,
Debtors; Office of the US Trustee, Trustee.

Respondents.

No. 2:09-bk-23475-SSC

Chapter 11

**OBJECTION TO CHAPTER 11 PLAN AND
DISCLOSURE STATEMENT**

Wells Fargo Bank, National Association, as Trustee for the Certificateholders of Structured Asset
Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR5 Mortgage Pass-Through
Certificates, Series 2006-AR5, a secured creditor, by its attorneys, TIFFANY & BOSCO, P.A., hereby

objects to the proposed Chapter 11 Plan and Disclosure Statement filed by the Debtors. This objection is supported by the following Memorandum of Points and Authorities.

Dated this 12th day of April, 2010.

Respectfully submitted,

TIFFANY & BOSCO, P.A.

By /s/ MSB #010167
Mark S. Bosco
Leonard J. McDonald
Attorneys for Movant

MEMORANDUM OF POINTS AND AUTHORITIES

Wells Fargo Bank, National Association, as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR5 Mortgage Pass-Through Certificates, Series 2006-AR5, files this response to the proposed 11 Plan of the Debtors. The Chapter 11 Plan provides for an impermissible cram down of Wells Fargo Bank, National Association, as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR5 Mortgage Pass-Through Certificates, Series 2006-AR5's lien interest on the real property commonly known as 5631 E. Florian Avenue, Mesa AZ 85206.

Wells Fargo Bank, National Association, as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR5 Mortgage Pass-Through Certificates, Series 2006-AR5, objects to the value of the subject real property as the Debtors arbitrarily propose that the fair market value of Secured Creditor's claim is \$135,000.00 without providing any legal or factual authority for such capricious treatment. Such modification is simply not supported by the Bankruptcy Code or the facts of this case. The proposed Plan appears to attempt to cramdown Secured Creditor's claim by scheduling or providing for a total claim to Secured Creditor in the amount of \$135,000.00 while in fact the total claim owed to the Secured Creditor is in the amount of \$208,548.16. The Plan proposed monthly payments of \$925.69 per month with an interest rate of 5.5%.

1 The remaining portion of the claim, approximately \$73,000.00, is to be treated as a General Unsecured
2 Claim. The Plan's proposal to pay the secured claim at a 5.5% interest rate is not reasonable under the
3 current market conditions and in light of the Debtor's past non-payment history.

4 Further, Secured Creditor objects to the proposed sale terms as provided in Debtors' "Plan" to the
5 potential future sale of the property. In the instant, Debtors' cannot provide any escrow documents to
6 assure Movant that the future sale of the property will provide a complete and full payoff of principal,
7 interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to, advances
8 made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid off. Nor
9 can the Debtors' provide evidence of the property value over a five year period. Currently, Secured
10 Creditor is 100% secured and cannot agree in the present what the property status could be in the future.
11 At such time as Debtors can provide Secured Creditor with documentation which indicates a full payoff of
12 principal, interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to,
13 advances made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid
14 off, Secured Creditor will re-evaluate their position at that time.

15 CONCLUSION

16 Any Chapter 11 Plan proposed by the Debtor(s) must provide for and eliminate the Objections
17 specified above in order to be reasonable and to comply with applicable provisions of the Bankruptcy
18 Code. Secured Creditor respectfully requests that the confirmation of the Chapter 11 Plan as proposed
19 by the Debtor(s) be denied, or in the alternative, be amended to provide for full payoff of the arrearages
20 owed to the Secured Creditor.

21 WHEREFORE, secured creditor prays as follows:

22 (1) That the 11 Plan be denied.

23 (2) For such other relief as this Court deems proper.

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1 DATED this 12th day of April, 2010.

2 Respectfully submitted,

3 TIFFANY & BOSCO, P.A.

4 BY /s/ MSB # 010167

5 Mark S. Bosco

6 Leonard J. McDonald

Attorneys for Secured Creditor

7 COPY of the foregoing mailed
8 April 12, 2010 to:

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